

Appl. No. 10/620,718
Amdt. dated Jul. 12, 2007
Reply to Office action of Jan. 12, 2007

Amendments to the Drawings:

The attached sheets of drawings includes changes to Figures 2A, 2B, 4, 5, 6B, 6C, 7, 8, 9A, 9B, 9C, 10, 11A, 11B and 11C. These sheets replace the all the original sheets including Figures 2A, 2B, 3, 4, 5, 6B, 6C, 7, 8, 9A, 9B, 9C, 10, 11A, 11B and 11C. The changes to the Figures are described in the previous amendments to the Specification.

Attachment: Replacement Sheets

REMARKS/ARGUMENTS

Claims 2-26 and 28-30 remain in the application. Claims 1 and 27 are hereby canceled without prejudice. Claims 1-30 were rejected in the Office Action mailed January 12, 2007 (hereinafter referred to as "Office Action"). Applicant respectfully requests a three month extension of time to respond to the Office Action. A credit card authorization is being submitted electronically with the filing of this response. Accordingly, applicant respectfully submits that this response is timely filed on July 12, 2007. It is believed that no fees are due at this time. In view of the following remarks and amendments, applicant respectfully request a timely Notice of Allowance be issued in this case.

Drawing Objections

The drawings were objected to for including reference character(s) not mentioned in the description and multiple reference characters used to designate the same element. Applicant respectfully submits that the foregoing amendments to these claims are fully responsive and overcome the objections. Reconsideration and removal of the objections are respectfully requested.

Double Patenting

Claims 1-26 were rejected under statutory double patenting as being in conflict with claims 1-23, 26-27 and 28 of U.S. Patent Application No. 10/620,904. Claims 1-7, 10-18 and 21-26 were rejected under statutory double patenting as being in conflict with claims 1-22 of U.S. Patent Application No. 10/620,903. Applicant respectfully submits that these rejections are provisional and not absolute since no claims have been allowed in the cited patent applications. Moreover, the claims in the present invention are directed to a multi-level marketing network embodiment that is not identical to the claims in the other patent applications. Applicant respectfully submits that appropriate action (amendment, cancellation or the filing of a terminal disclaimer) will be taken if the double patenting rejections remain after the allowance of any applicable claims. Reconsideration and either removal or changing the type of the rejections are respectfully requested.

Claim Rejections under 35 U.S.C. § 101

Claims 1 and 8 were rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter – a human being. Applicant respectfully submits that the rejections are moot as a result of the cancellation of claims 1 and 27.

Claims 25 and 29 were rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter as being software per se. "When functional descriptive material is recorded on some computer-readable medium it

becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” MPEP § 2106 IV.B.1; *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory). The MPEP specifically states that “a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory.” MPEP § 2106 IV.B.1(a).

Although applicant respectfully submits that “a computer program embodied on a computer readable medium” and functional descriptive material is useful without reciting execution by a server or computer, claims 25 and 29 have been amended to add that the computer program is executable by a server. Reconsideration and removal of the rejections are respectfully requested.

Claim Rejections under 35 U.S.C. § 112

Claims 1 and 24-30 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. More specifically, the term “multi-level network” was considered indefinite. Applicant respectfully submits that the foregoing amendments to “multi-level marketing network” are fully responsive and overcome the objections. Contrary to the examiner’s interpretation, a multi-level marketing network or MLM means that a member receives an incentive for recruiting or causing a new person to become a member. This amendment and interpretation can be found in the specification, at least at, paragraphs 2 and 41, and Figure 4. Reconsideration and removal of the rejections are respectfully requested.

Rejections under 35 U.S.C. § 102

Claims 1-10, 17 and 27 were rejected under 35 U.S.C. § 102(b) as being anticipated by Reference U (hereinafter referred to as “The Dental Club”). Claims 25-26 and 29-30 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,819,092 (hereinafter referred to as “Ferguson”). For anticipation, a single reference must identically disclose every element of the claimed invention. *Corning Glass Works v. Sumitomo Electric*, 9 USPQ 2d 1962, 1965 (Fed. Cir. 1989). A reference that excludes a claimed element, no matter how insubstantial or obvious, is enough to negate anticipation. *Connell v. Sears, Roebuck & Co.*, 220 USPQ 193, 198 (Fed. Cir. 1983). Applicant respectfully submits that claims 2-10, 17 and 25-26, as amended, are not anticipated by the cited art and are, therefore, allowable under 35 U.S.C. § 102(b) because *The Dental Club and Ferguson do not identically disclose members or health care providers of the health care plan participating via incentives within a member or health care provider multi-level marketing network*. In addition, Ferguson does not

identically disclose the fee structure recited in claims 2-10, 17 and 25-26. As a result, the cited references “do not identically disclose every element” recited in claims 2-10, 17 and 25-26. Accordingly, applicant respectfully submits that claims 2-10, 17 and 25-26 are not anticipated by the cited references and are, therefore, allowable under 35 U.S.C. § 102(b).

Claim Rejections under 35 U.S.C. § 103(a)

Claims 11-16, 18-24 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over The Dental Club in view of Ferguson. Applicant respectfully submits that claims 2-26 and 28-30, as amended, are patentable over the cited references because none of the cited references disclose, teach or suggest *members or health care providers of the health care plan participating via incentives within a member or health care provider multi-level marketing network*. Moreover, applicant respectfully submits that it would not have been obvious to one of ordinary skill in the art at the time the invention was made to offer basic and premium listings to medical service providers within a health care network because the insurance, HMO, and PPO industries teach against any sort of favoritism or competition among medical service providers within their networks. For these reasons, applicant respectfully submits that claims 2-26 and 28-30 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 2-26 and 28-30 be withdrawn.

Conclusion

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the rejections. Applicant submits that claims 2-26 and 28-30, as amended, are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

Date: July 12, 2007

Respectfully submitted,

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